

ESTTA Tracking number: **ESTTA1291768**

Filing date: **06/16/2023**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91273569
Party	Plaintiff DAMM, LLC
Correspondence address	PAUL DIETZ DIETZ LAW OFFICE LLC 4975 WILDERNESS LAKE CIR ELKO NEW MARKET, MN 55020 UNITED STATES Primary email: paul@dietzlawoffice.com 9522012008
Submission	Other Motions/Submissions
Filer's name	Paul Dietz
Filer's email	paul@dietzlawoffice.com
Signature	/Paul Dietz/
Date	06/16/2023
Attachments	Response_to order for update.pdf(545757 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 90/453,221

For the mark: Hammer-Schlagen

Published in the Official Gazette of August 24, 2021

DAMM, LLC

Opposer,

Opposition No. 91/273,569

WRB, Inc.

Applicant.

OPPOSER DAMM'S RESPONSE TO ORDER

In response to the Order dated May 18, 2023 requiring a status update from the parties, Opposer, DAMM LLC ("Opposer" or "DAMM"), states that discovery has now closed in the civil matter. Significant evidence has been obtained through discovery that proves applicant has not used the applied for mark in interstate commerce on the designated goods since 1999 - the date alleged by Applicant. There is also significant evidence that the German word "hammerschlagen" is descriptive and generic with respect to components used to play a hammer and nail game, namely the wooden gameboard. The civil litigation will not be dispositive to the issues in these proceedings and a further stay of these proceedings does not advance the public's interests. Opposer respectfully requests that the Board resume proceedings, allow opposer to

submit evidence of lack of continuous, exclusive use of the applied for mark in commerce, by the applicant, and reset dates as appropriate in this matter.

Dated: June 16, 2023

Respectfully Submitted

s/ Paul Dietz

Paul T. Dietz (#237838)

DIETZ LAW OFFICE LLC
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Elko New Market, MN 55020
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ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2023 I caused to have electronically filed the foregoing with the ESTTA System which in turn automatically generates a Notice of Electronic Filing (NEF) to all parties in the case. I further certify that a copy of the Motion for Default Judgment was sent via email to applicant as follows:

WRB, INC.
James Martin, CEO
5865 Neal Ave N / #113
Stillwater, MN 55082
trademark@hammerschlagen.com

Dated: June 16, 2023

Respectfully Submitted,

s/ Paul Dietz

Paul T. Dietz (#237838)

Attorney for Defendants

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